

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

IGNACIO DEALBA,

Defendant.

Case No. 2:12-cr-00079-JCM-PAL

ORDER

(Mtn for Leave - Dkt. #62)

This matter is before the court on Defendant Ignacia DeAlba's Pro Se Motion for Leave to File Pro Se Motion to Suppress (Dkt. #62) filed June 19, 2013. The court has considered the Motion.

BACKGROUND

On March 13, 2012, the grand jury returned an Indictment (Dkt. #1), charging DeAlba with felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2). On March 23, 2012, DeAlba made an initial appearance, entered a not guilty plea, and was detained pending trial. *See Minutes of Proceedings* (Dkt. #9). On July 25, 2012, DeAlba filed a Motion to Suppress (Dkt. #21), seeking to suppress evidence found after a traffic stop. On September 14, 2012, the court entered a Report of Findings and Recommendation (Dkt. #32) recommending that the Motion to Suppress be denied, which the district judge affirmed in an Order (Dkt. #39) adopting the Report and Recommendation and denying the Motion to Suppress.

On September 18, 2012, the grand jury returned a Superseding Indictment (Dkt. #33), charging DeAlba with two counts of felon in possession of a firearm in violation 18 U.S.C. §§ 922(g)(1) and 924(a)(2). The charges in the Superseding Indictment arise out of the July 9, 2011 search of the home of Helen Robinette, DeAlba's mother. DeAlba made an initial appearance on the Superseding

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1 Indictment on September 28, 2012, entered not guilty pleas, and was detained pending trial. *See*
2 Minutes of Proceedings (Dkt. #36).

3 On January 25, 2013, DeAlba filed a second Motion to Suppress (Dkt. #44). The court granted
4 DeAlba's request for an evidentiary hearing and set it for February 28, 2013. The parties stipulated to a
5 continuance and the court held an evidentiary hearing on the Motion to Suppress on March 12, 2013.
6 *See*, Stipulation (Dkt #46), Order (Dkt #48), and Minutes of Proceeding (Dkt. #52). On April 12,
7 2013, the court entered a Report of Findings and Recommendation ("R&R") (Dkt. #53) recommending
8 that the Motion to Suppress be denied. DeAlba objected to the R&R (Dkt. #60), and the government
9 responded (Dkt. #61). That matter is under submission to the district judge.

10 DISCUSSION

11 DeAlba requests permission to file a third *pro se* motion to suppress related to the inventory
12 search of the vehicle in which DeAlba was a passenger prior to his arrest by Las Vegas Metropolitan
13 Police Department. He states that on June 4, 2013 he mailed a copy of his motion with supporting
14 authorities to his counsel who has not filed the motion on his behalf. However, the first motion to
15 suppress filed by counsel in this case raised Fourth Amendment challenges to the stop and sought to
16 suppress evidence seized as a result of the stop.

17 Local Rule IA 10-6(a) provides that a party who is represented by counsel cannot appear or act
18 in a case while so represented. *Id.* DeAlba is represented by attorney Rebecca Levy of the Federal
19 Public Defender's Office. She has filed two Motions to Suppress on his behalf. The court held an
20 evidentiary hearing on the second-filed Motion, and issued an R&R. Objections to this court's findings
21 and recommendations on both motions to suppress are now fully briefed and before the trial judge for
22 decision. DeAlba is not entitled to file motions on his own behalf while represented by counsel, and is
23 also not entitled to file multiple motions to suppress on issues previously addressed by the court. His
24 counsel has objected to this court's prior findings and recommendations, and asked the trial judge to
25 overrule those findings and not follow the recommendations. The trial court has not yet decided
26 whether to affirm, adopt or overrule them.

27 For these reasons,

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IT IS ORDERED that DeAlba's Motion for Leave (Dkt. #62) is DENIED.

Dated this 21st day of June, 2013.



PEGGY A. LEEN
UNITED STATES MAGISTRATE JUDGE